



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0893/PS

GMM:cjs:rs

Stays

3/29  
Wanted Tues 3/30

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen. Cert

Regent

1 AN ACT *to repeal* 938.345 (4); *to renumber and amend* 54.56, 54.57 and  
2 808.075 (4) (f) 3.; *to amend* 48.02 (8), 48.023 (intro.), 48.023 (3), 48.023 (4),  
3 48.09 (5), 48.14 (2) (b), 48.14 (11), 48.235 (1) (c), 48.299 (4) (a), 48.299 (4) (b),  
4 48.345 (intro.), 48.368 (1), 48.62 (2), 48.831 (1), 48.831 (1m) (e), 48.977 (2) (a),  
5 48.977 (2) (e), 48.977 (2) (f), 48.977 (4) (b) 3., 48.977 (4) (c) 2., 48.977 (4) (i),  
6 48.977 (8), 48.978 (7), 49.32 (1) (am), 51.30 (4) (b) 18. a., 51.30 (4) (b) 18. c., 54.01  
7 (10), 54.10 (1), 54.52 (1), 55.03 (1), 55.10 (4) (intro.), 55.10 (4) (a), 115.76 (12) (b)  
8 2., 146.82 (2) (a) 9. a., 146.82 (2) (a) 9. c., 214.37 (4) (k) 1., 215.26 (8) (e) 1., 757.69  
9 (1m) (e), 808.075 (4) (a) 11., 814.66 (1) (m), 938.02 (8), 938.34 (3) (c) and 938.345  
10 (1) (e); *to repeal and recreate* 48.62 (2) and 938.34 (3) (c); and *to create* 48.235

1 (3) (c), 48.976, 48.979, 808.075 (4) (a) 9m. and 808.075 (4) (a) 13. of the statutes;  
2 **relating to:** guardianships of children.

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### ***Analysis by the Legislative Reference Bureau***

#### **INTRODUCTION**

Current law permits the court assigned to exercise jurisdiction under the Children's Code (juvenile court) to appoint a guardian of the person of a child under the Children's Code only under certain circumstances, including:

1. When a child does not have a living parent and a finding as to the adoptability of the child is sought.

2. When a child who has been adjudged to be in need of protection or services under the Children's Code, or adjudged to be in need of protection or services under the Juvenile Justice Code on the grounds of uncontrollability, and placed outside the home is likely to be placed in the home of the guardian for an extended period or until the child attains the age of 18 years, it is not in the best interests of the child that a petition for termination of parental rights be filed, and the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian (protection or services guardianship).

3. When a parent wishes to have a standby guardian appointed to assume the duties and authority of guardianship on the incapacity or debilitation of the parent.

Under any other circumstances, however, the chapter of the statutes governing guardianships generally, which include guardianships of the estates of children and guardianships of the persons and estates of adults who are found incompetent, govern a guardianship of the person of a child.

This bill removes guardianships of the persons of children from the chapter of the statutes governing guardianships generally and instead creates a new provision in the Children's Code that may be used for the appointment of a guardian of the person of a child. The bill also makes certain changes relating to protection or services guardianships and permits a parent, guardian, or legal custodian to delegate by a power of attorney his or her powers regarding the care and custody of a child.

#### **THE BILL**

##### ***Types of guardianships***

***Full guardianships.*** Under the bill, the juvenile court may appoint a guardian to be a child's full guardian when the child's parents are unfit, unwilling, or unable to provide for the care, custody, and control of the child or when other compelling facts and circumstances demonstrate that a full guardianship is necessary.

Under current law, a full guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare. Those duties and authority include: 1) the authority to consent to marriage,

enlistment in the U.S. Armed Forces, major medical, psychiatric, and surgical treatment, and to obtaining a driver's license; 2) the authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child; 3) the right and duty of reasonable visitation of the child; and 4) the rights and responsibilities of legal custody, which rights and responsibilities include the right and duty to protect, train, and discipline the child and to provide food, shelter, legal services, education, and ordinary medical and dental care for the child.

This bill expands the duties and authority of a full guardian of a child to include the authority to determine reasonable visitation with the child, the rights and responsibilities of physical custody of the child, and the right to change the residence of the child to another state.

The bill also specifies that a guardian acting on behalf of a child may exercise only those powers that the guardian is authorized to exercise by statute or juvenile court order and that the juvenile court may authorize a guardian to exercise only those powers that are necessary to provide for the care, custody, and control of the child and to exercise those powers in a manner that is appropriate to the child. Otherwise, the parent retains all rights and duties accruing to the parent as a result of the parent-child relationship that are not assigned to the guardian or otherwise limited by statute or juvenile court order.

**Limited guardianships.** Under the bill, the juvenile court may appoint a guardian to be a child's limited guardian when the child's parents need assistance in providing for the care, custody, and control of the child. Under a limited guardianship, the duties and authority of the guardian are limited as specified by the order appointing the guardian. The juvenile court may limit the authority of a guardian to allow the parent to retain such power to make decisions as is within the parent's ability to exercise effectively and may limit the physical custody of the guardian to allow shared physical custody with the parent if shared physical custody is in the best interests of the child. The juvenile court must set an expiration date for a limited guardianship order, which may be extended for good cause shown.

**Temporary guardianships.** Under the bill, the juvenile court may appoint a guardian to be a child's temporary guardian when the child's particular situation, including the inability of the child's parent to provide for the care, custody, and control of the child for a temporary period of time, requires the appointment of a temporary guardian. The order appointing a temporary guardian must specify the authority of the guardian, which must be limited to those acts that are reasonably related to the reasons for the appointment as specified in the petition for temporary guardianship. A temporary guardianship may not exceed 180 days, but may be extended for one additional 180-day period for good cause shown. A temporary guardianship ceases on expiration of that period or on termination of the situation of the child that was the cause of the temporary guardianship.

**Emergency guardianships.** Under the bill, the juvenile court may appoint a guardian to be a child's emergency guardian when the child's welfare requires the immediate appointment of an emergency guardian. The order appointing an emergency guardian must specify the authority of the guardian, which must be

limited to those acts that are reasonably related to the reasons for the appointment as specified in the petition for emergency guardianship. An emergency guardianship may not exceed 60 days and ceases on expiration of that period or on termination of the situation of the child that was the cause of the emergency guardianship.

***Procedures for appointment of full, limited, or temporary guardian***

***Petition.*** Any person, including a child 12 years of age or over on his or her own behalf, may petition for the appointment of a guardian of a child. The petitioner must cause the petition and notice of the time and place of the hearing on the petition to be served upon all interested persons, as defined in the bill, unless notice is waived by an interested person or by the juvenile court for good cause shown.

For purposes of a petition for guardianship of a child, "interested person" means: 1) the child, if 12 years of age or over, the child's guardian ad litem and the child's counsel; 2) the child's parents, current guardian, legal custodian, and physical custodian; 3) if the child is a nonmarital child whose parents have not intermarried and if paternity of the child has not been established, any person who has filed a declaration of parental interest and any person who is alleged to be, or who may be, the father of the child; 4) the individual who is nominated as the guardian; 5) if the child has no living parent, any individual nominated to act as fiduciary for the child in a will or other written instrument executed by a parent of the child; 6) if the child is receiving any public services or benefits, the county department of human services or social services (county department) or, in Milwaukee County, the Department of Children and Families (DCF); 7) if the child is an Indian child, the child's Indian custodian and tribe; and 8) any other person that the juvenile court may require.

***Guardian ad litem.*** The juvenile court must appoint a guardian ad litem (GAL) for a child who is the subject of a guardianship proceeding. In addition to his or her general duty to advocate for the best interests of the child, a GAL appointed for a child who is the subject of a guardianship proceeding must, unless granted leave by the juvenile court not to do so, do all of the following:

1. Personally, or through a trained designee, meet with the child, assess the appropriateness and safety of the environment of the child, and, if appropriate to the age and developmental level of the child, interview the child and determine the child's goals and concerns regarding the proposed guardianship. If the child is 12 years of age or over, the GAL must also advise the child that he or she may request the appointment of counsel or retain counsel of his or her own choosing to oppose the guardianship petition.

2. Interview the proposed guardian, personally or through a trained designee, visit the guardian's home, if appropriate, and report to the juvenile court concerning the suitability of the proposed guardian to serve as guardian of the child.

3. Attend all juvenile court proceedings relating to the guardianship, present evidence concerning the best interests of the child, if necessary, and make clear and specific recommendations to the juvenile court concerning the best interests of the child at every stage of the guardianship proceeding.

***Statement by proposed guardian.*** At least 96 hours before the hearing on the petition, the proposed guardian must submit to the juvenile court a sworn and notarized statement as to the number of persons for whom the proposed guardian is

responsible, whether as a parent, guardian, or legal custodian, as to the proposed guardian's income, assets, debts, and living expenses, and as to whether the proposed guardian is currently charged with or has been convicted of a crime or has been determined under the child abuse and neglect reporting law to have abused or neglected a child.

**Hearing.** The initial hearing on a guardianship petition must be heard within 30 days after the filing of the petition. If the petition is not contested, the juvenile court must immediately proceed to a fact-finding and dispositional hearing, unless an adjournment is requested. If the petition is contested or an adjournment is requested, the juvenile court must set a date for a fact-finding and dispositional hearing that allows reasonable time for the parties to prepare but is not more than 30 days after the initial hearing.

If the petition is contested, ~~on the request of~~ <sup>on the request of</sup> any interested person ~~requests~~ or on the juvenile court's own motion, the juvenile court may order the county department, a licensed child welfare agency, or, in Milwaukee County, DCF or an agency under contract with DCF to conduct an investigation to determine whether the child is a proper subject for guardianship and whether the proposed guardian's home is suitable for the child. The person conducting the investigation must file a report of the investigation with the juvenile court at least 96 hours before the fact-finding and dispositional hearing, and the parents of the child and the proposed guardian must reimburse that person for the cost of the investigation according to a fee schedule established by DCF based on ability to pay. ✓

The proposed guardian and any standby guardian, which is a person designated to become guardian on the death, unwillingness or inability to act, resignation, or removal of the guardian or to act as guardian during a period of temporary inability of the guardian to fulfill his or her duties, must be physically present at the hearing, unless excused by the juvenile court or the juvenile court permits attendance by telephone. The child is not required to attend the hearing, but if the child has nominated the guardian, the child must provide to his or her GAL sufficient information for the GAL to advise the juvenile court whether the nomination is in the best interests of the child. Any other interested person may participate in the hearing if the juvenile court determines that the interested person is a necessary party.

**Dispositional factors.** In determining the appropriate disposition of a guardianship petition, the juvenile court must consider all of the following factors:

1. Any nomination of a guardian made by a parent or by the child, if 12 years of age or over, and the opinions of the parents and child as to what is in the best interests of the child.
2. Whether the proposed guardian would be fit, willing, and able to serve as the guardian of the child.
3. If the child is an Indian child, the order of placement preference required for an Indian child in an Indian child custody proceeding, unless the juvenile court finds good cause for departing from that order.
4. Whether appointment of the proposed guardian is in the best interests of the child.

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**Disposition.** At the conclusion of the fact-finding and dispositional hearing, the juvenile court must either: 1) dismiss the petition if the juvenile court ~~determines~~ that the allegations in the petition ~~have not been proved~~ by clear and convincing evidence or that appointment of the proposed guardian is not in the best interests of the child; or 2) order the proposed guardian to be appointed as the child's guardian if the juvenile court ~~determines that~~ those allegations ~~have been so proved~~ and that the appointment is in the best interests of the child. A disposition ordering the appointment of a guardian may also designate an amount of support to be paid by the child's parents and may include reasonable rules of parental visitation.

### **Procedures for appointment of emergency guardian**

**Petition.** Any person may petition for the appointment of an emergency guardian for a child. The petitioner must give notice of the petition and of the time and place of the hearing on the petition to the child, if 12 years of age or over, the child's guardian ad litem, and the child's counsel, if any; the child's parents, guardian, and legal custodian; and the person nominated as emergency guardian. Notice of the petition and a copy of the petition must be served by the most practical means possible, including personal service or service by electronic mail or telephone, as soon after the filing of the petition as possible and must include notice of the right to counsel and of the right to petition for reconsideration or modification of the emergency guardianship.

**GAL.** The juvenile court must appoint a GAL for the child as soon as possible after the filing of the petition and must attempt to appoint the GAL before the hearing on the petition, but may appoint the GAL after the hearing if exigent circumstances require the immediate appointment of an emergency guardian. The GAL must attempt to meet with the child before the hearing or as soon as is practicable after the hearing, but not later than three days after the hearing, and must report to the juvenile court on the advisability of the emergency guardianship at the hearing or not later than seven days after the hearing.

**Hearing.** The juvenile court must hold a hearing on the emergency guardianship petition as soon as possible after the filing of the petition or, for good cause shown, may issue a temporary order appointing an emergency guardian without a hearing, which remains in effect until a hearing is held on the petition. If the juvenile court appoints an emergency guardian, any person entitled to receive notice of the emergency guardianship petition may petition for reconsideration or modification of the emergency guardianship and the juvenile court must hold a rehearing on the issue of appointment of the emergency guardian within 30 days after the filing of the petition.

**Immunity.** An emergency guardian of a child is immune from civil liability for his or her acts or omissions in performing the duties of emergency guardianship if he or she performs the duties in good faith, in the best interests of the child, and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

### **Post-appointment procedures**

**Successor guardian.** If a guardian dies, is removed by order of the juvenile court, or resigns and the resignation is accepted by the juvenile court, the juvenile

court may appoint a competent and suitable person as successor guardian. The appointment may be made on the juvenile court's own motion or on the petition of any interested person, which, for purposes of proceedings subsequent to an order for guardianship of a child, means: 1) the child, if 12 years of age or over, the child's guardian ad litem, and the child's counsel; 2) the guardian; 3) the child's parents; 4) the county of venue, if the county has an interest in the guardianship; 5) if the child is an Indian child, the child's tribe; and 6) any other person that the juvenile court may require.

A successor guardian may be appointed without a hearing, but the juvenile court may, upon request of any interested person or on its own motion, direct that the petition or motion for the appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided for an original appointment of a guardian. If a successor is appointed without a hearing, the successor guardian must provide notice to all interested persons of the appointment, the right to counsel, and the right to petition for reconsideration of the appointment.

**Modification of guardianship order.** Any interested person or other person approved by the juvenile court may request a modification of a guardianship order or the juvenile court may, on its own motion, propose such a modification. The request or motion must set forth in detail the nature of the proposed modification, allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed modification would be in the best interests of the child, and allege any other information that affects the advisability of the juvenile court's disposition. The juvenile court must hold a hearing on the matter prior to any modification of the guardianship order if the request or motion indicates that new information is available that affects the advisability of the juvenile court's guardianship order, unless written waivers of objections to the modification are signed by all interested persons and the juvenile court approves the waivers. The juvenile court may order a modification if, at the hearing, the juvenile court finds that ~~it has been~~ approved by clear and convincing evidence that there has been a substantial change in circumstances and ~~if the juvenile court~~ determines that a modification would be in the best interests of the child.

the person proposing the modification has

**Review of conduct of guardian.** The juvenile court that appointed the guardian of a child has continuing jurisdiction over the guardian and may impose certain remedies if the guardian abuses or neglects the child or knowingly permits others to do so, fails to disclose information that would have prevented his or her appointment as guardian, or otherwise fails to perform any of his or her duties as guardian. If the juvenile court finds by clear and convincing evidence that any of those circumstances apply, the juvenile court may remove the guardian, remove the guardian and appoint a successor guardian, enter any other order that may be necessary or appropriate to compel the guardian to carry out his or her duties, modify the duties and authority of the guardian, or, if the guardian's conduct was egregious, require the guardian to pay any costs of the proceeding.

**Termination of guardianship.** A guardianship continues until the child attains the age of 18 years unless: 1) the guardianship is for a lesser period of time

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and that time has expired; 2) the child marries; 3) the child dies; 4) the child's residence changes from this state to another state and a guardian is appointed in the new state of residence; 5) the guardian dies, or resigns and the resignation is approved by the juvenile court, and a successor guardian is not appointed; 6) the guardian is removed for cause and a successor guardian is not appointed; or 7) the guardianship is terminated on the request of a parent.

A parent may request that a guardianship be terminated by filing a petition with the juvenile court alleging facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is fit, willing, and able to carry out the duties of a guardian, and that termination of the guardianship would be in the best interests of the child. The juvenile court must hold a hearing on the petition, unless written waivers of objections to termination of the guardianship are signed by all interested persons and the juvenile court approves the waivers. ~~The juvenile court must terminate the guardianship if the juvenile court finds that it has been~~ proved by clear and convincing evidence that ~~the parent~~ has remedied the unfitness, unwillingness, or inability to provide for the care, custody, and control of the child or the compelling facts and circumstances on which the guardianship was granted and that ~~the parent~~ is now fit, willing, and able to carry out the duties of a guardian and ~~the juvenile court~~ determines that termination of the guardianship would be in the best interests of the child.

### **Protection or services guardianships**

Under the current Children's Code, a protection or services guardianship may be ordered when a child who has been adjudged to be in need of protection or services under the Children's Code, or adjudged to be in need of protection or services under the Juvenile Justice Code on the grounds of uncontrollability, and placed outside the home is likely to be placed in the home of the guardian for an extended period or until the child attains the age of 18 years, it is not in the best interests of the child that a petition for termination of parental rights be filed, and the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian.

This bill expands the applicability of a protection or services guardianship to include a child under ten years of age who has been adjudged to be in need of protection or services under the Juvenile Justice Code on the grounds of having committed a delinquent act and a child ten years of age or over who has been adjudged delinquent. The bill also permits such a guardianship to be ordered not only when the child's parent is neglecting, refusing, or unable to carry out the duties of a guardian but also when the child's parent is not meeting the conditions established in a juvenile court order for the safe return of the child to the home.

Under current law, service of a petition for a protection or services guardianship and notice of hearing on the petition may be made by 1st class mail, by personal service or, if with reasonable diligence a party cannot be served by mail or by personal service, by publication of the notice in a newspaper that is likely to give notice to the parties. This bill eliminates service by publication for a protection or services guardianship petition.

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***Delegation of power by parent, guardian, or legal custodian***

Finally, the bill permits a parent, guardian, or legal custodian of a child, by a properly executed power of attorney, to delegate to another person, for a period not to exceed one year, any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 48.02 (8) of the statutes is amended to read:

2           48.02 (8) "Guardian" means the person named by the court having the duty and  
3 authority of guardianship guardian of the person of a child under s. 48.023.

4           **SECTION 2.** 48.023 (intro.) of the statutes is amended to read:

5           **48.023 Guardianship.** (intro.) Except as limited by an order of the court  
6 under s. 48.976 (2) (c) 2., 48.977 (5) (b), or 48.978 (6) (b) 2., a person appointed by the  
7 court to be the guardian of a child under this chapter has the duty and authority to  
8 make important decisions in matters having a permanent effect on the life and  
9 development of the child and the duty to be concerned about the child's general  
10 welfare, including ~~but not limited to~~ all of the following:

11           **SECTION 3.** 48.023 (3) of the statutes is amended to read:

12           48.023 (3) The right and duty of reasonable visitation ~~of~~ with the child and,  
13 subject to an order of a court of competent jurisdiction, the authority to determine  
14 reasonable visitation with the child.

15           **SECTION 4.** 48.023 (4) of the statutes is amended to read:

16           48.023 (4) The rights and responsibilities of physical custody and legal custody,  
17 including the right to change the residence of the child from this state to another  
18 state, except when physical custody or legal custody has been vested in another

1 person or when the child is under the supervision of the department of corrections  
2 under s. 938.183, 938.34 (4h), (4m) or (4n), or 938.357 (4) or the supervision of a  
3 county department under s. 938.34 (4d) or (4n).

4 **SECTION 5.** 48.09 (5) of the statutes is amended to read:

5 48.09 (5) By the district attorney or, if designated by the county board of  
6 supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133,  
7 48.976, or 48.977. If the county board transfers this authority to or from the district  
8 attorney on or after May 11, 1990, the board may do so only if the action is effective  
9 on September 1 of an odd-numbered year and the board notifies the department of  
10 administration of that change by January 1 of that odd-numbered year.

11 **SECTION 6.** 48.14 (2) (b) of the statutes is amended to read:

12 48.14 (2) (b) The appointment and removal of a guardian of the person for a  
13 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.976, 48.977,  
14 and 48.978 and ~~ch. 54~~ and for a child found to be in need of protection or services  
15 under s. 48.13 because the child is without parent or guardian.

16 **SECTION 7.** 48.14 (11) of the statutes is amended to read:

17 48.14 (11) Granting visitation privileges under s. ~~54.56~~ 48.976 (11).

18 **SECTION 8.** 48.235 (1) (c) of the statutes is amended to read:

19 48.235 (1) (c) The court shall appoint a guardian ad litem for any child who is  
20 the subject of a proceeding to terminate parental rights, whether voluntary or  
21 involuntary, for a child who is the subject of a contested adoption proceeding, and for  
22 a child who is the subject of a proceeding under s. 48.976, 48.977, or 48.978.

23 **SECTION 9.** 48.235 (3) (c) of the statutes is created to read:

24 48.235 (3) (c) In addition to any other duties and responsibilities required of  
25 a guardian ad litem, a guardian ad litem appointed for a child who is the subject of

1 a proceeding under s. 48.976 shall do all of the following unless granted leave by the  
2 court not to do so:

3 1. Personally, or through a trained designee, meet with the child, assess the  
4 appropriateness and safety of the environment of the child, and, if appropriate to the  
5 age and developmental level of the child, interview the child and determine the  
6 child's goals and concerns regarding the proposed guardianship. If the child is 12  
7 years of age or over, the guardian ad litem shall also advise the child that he or she  
8 may request the appointment of counsel or retain counsel of his or her own choosing.

9 2. Interview the proposed guardian, personally or through a trained designee,  
10 visit the guardian's home, if appropriate, and report to the court concerning the  
11 suitability of the proposed guardian to serve as guardian of the child.

12 3. Attend all court proceedings relating to the guardianship, present evidence  
13 concerning the best interests of the child, if necessary, and make clear and specific  
14 recommendations to the court concerning the best interests of the child at every stage  
15 of the proceeding.

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16 4. Report to the court on any matter that the court requests.

17 **SECTION 10.** 48.299 (4) (a) of the statutes is amended to read:

18 48.299 (4) (a) Chapters 901 to 911 shall govern the presentation of evidence at  
19 the fact-finding hearings under ss. 48.31, 48.42, 48.976, 48.977 (4) (d), and 48.978  
20 (2) (e) and (3) (f) 2.

21 **SECTION 11.** 48.299 (4) (b) of the statutes is amended to read:

22 48.299 (4) (b) Except as provided in s. 901.05, neither common law nor  
23 statutory rules of evidence are binding at a hearing for a child held in custody under  
24 s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a  
25 runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing

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1 about changes in placement, revision of dispositional orders, extension of  
2 dispositional orders or termination of guardianship orders entered under s. 48.976,  
3 48.977 (4) (h) 2. or (6), or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall  
4 admit all testimony having reasonable probative value, but shall exclude  
5 immaterial, irrelevant or unduly repetitious testimony or evidence that is  
6 inadmissible under s. 901.05. Hearsay evidence may be admitted if it has  
7 demonstrable circumstantial guarantees of trustworthiness. The court shall give  
8 effect to the rules of privilege recognized by law. The court shall apply the basic  
9 principles of relevancy, materiality and probative value to proof of all questions of  
10 fact. Objections to evidentiary offers and offers of proof of evidence not admitted may  
11 be made and shall be noted in the record.

12 **SECTION 12.** 48.345 (intro.) of the statutes is amended to read:

13 **48.345 Disposition of child or unborn child of child expectant mother**  
14 **adjudged in need of protection or services.** (intro.) If the judge finds that the  
15 child is in need of protection or services or that the unborn child of a child expectant  
16 mother is in need of protection or services, the judge shall enter an order deciding one  
17 or more of the dispositions of the case as provided in this section under a care and  
18 treatment plan, except that the order may not place any child not specifically found  
19 under this chapter or chs. 46, 49, 51, 54, or 115 to be developmentally disabled,  
20 mentally ill, or to have a disability specified in s. 115.76 (5) in ~~facilities~~ a facility that  
21 exclusively ~~treat~~ treats those categories of children, and the court may not place any  
22 child expectant mother of an unborn child in need of protection or services outside  
23 of the child expectant mother's home unless the court finds that the child expectant  
24 mother is refusing or has refused to accept any alcohol or other drug abuse services  
25 offered to her or is not making or has not made a good faith effort to participate in

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any alcohol or other drug abuse services offered to her. The dispositions under this section are as follows:

**SECTION 13.** 48.368 (1) of the statutes is amended to read:

4 48.368 (1) If a petition for termination of parental rights is filed under s. 48.41  
5 or 48.415 or an appeal from a judgment terminating or denying termination of  
6 parental rights is filed during the year in which a dispositional order under s. 48.355,  
7 an extension order under s. 48.365, a voluntary agreement for placement of the child  
8 under s. 48.63, or a guardianship order under ch. 54, 2007 stats., or ch. 880, 2003  
9 stats., or s. 48.976 or 48.977 or ~~ch. 54~~ is in effect, the dispositional or extension order,  
10 voluntary agreement, or guardianship order shall remain in effect until all  
11 proceedings related to the filing of the petition or an appeal are concluded.

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Insert  
13-11  
12 **SECTION 14.** 48.62 (2) of the statutes is amended to read:

13 48.62 (2) A relative,, or a guardian of a child who provides care and  
14 maintenance for the child is not required to obtain the license specified in this  
15 section. The department, county department, or licensed child welfare agency as  
16 provided in s. 48.75 may issue a license to operate a foster home or a treatment foster  
17 home to a relative who has no duty of support under s. 49.90 (1) (a) and who requests  
18 a license to operate a foster home or treatment foster home for a specific child who  
19 is either placed by court order or who is the subject of a voluntary placement  
20 agreement under s. 48.63. The department, a county department, or a licensed child  
21 welfare agency may, at the request of a guardian appointed under s. 48.976, 48.977,  
22 or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., license the guardian's home as  
23 a foster home or treatment foster home for the guardian's minor ward who is living  
24 in the home and who is placed in the home by court order. Relatives with no duty of  
25 support and guardians appointed under s. 48.976, 48.977, or 48.978, ch. 54, 2007

1 stats., or ch. 880, 2003 stats., who are licensed to operate foster homes or treatment  
2 foster homes are subject to the department's licensing rules.

3 **SECTION 15.** 48.62 (2) of the statutes, as affected by 2009 Wisconsin Acts 28 and  
4 .... (this act), is repealed and recreated to read:

5 48.62 (2) A relative or a guardian of a child who provides care and maintenance  
6 for the child is not required to obtain the license specified in this section. The  
7 department, county department, or licensed child welfare agency as provided in s.  
8 48.75 may issue a license to operate a foster home to a relative who has no duty of  
9 support under s. 49.90 (1) (a) and who requests a license to operate a foster home for  
10 a specific child who is either placed by court order or who is the subject of a voluntary  
11 placement agreement under s. 48.63. The department, a county department, or a  
12 licensed child welfare agency may, at the request of a guardian appointed under s.  
13 48.976, 48.977, or 48.978, ch. 54, 2007 stats., or ch. 880, 2003 stats., license the  
14 guardian's home as a foster home for the guardian's minor ward who is living in the  
15 home and who is placed in the home by court order. Relatives with no duty of support  
16 and guardians appointed under s. 48.976, 48.977, or 48.978, ch. 54, 2007 stats., or  
17 ch. 880, 2003 stats., who are licensed to operate foster homes are subject to the  
18 department's licensing rules.

19 **SECTION 16.** 48.831 (1) of the statutes is amended to read:

20 48.831 (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment  
21 of a guardian of a child who does not have a living parent if a finding as to the  
22 adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ~~ch. 54~~  
23 s. 48.976 applies to the appointment of a guardian for a child who does not have a  
24 living parent for all other purposes. An appointment of a guardian of the estate of

1 a child who does not have a living parent shall be conducted in accordance with the  
2 procedures specified in ch. 54.

3 **SECTION 17.** 48.831 (1m) (e) of the statutes is amended to read:

4 48.831 (1m) (e) A guardian appointed under s. 48.976, ch. 54, 2007 stats., or  
5 ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court  
6 under s. 48.976 (10), 54.54 (1), 2007 stats., or s. 880.17 (1), 2003 stats.

7 **SECTION 18.** 48.976 of the statutes is created to read:

8 **48.976 Appointment of guardian of the person of a child. (1) DEFINITION.**

9 In this section, "interested person" means any of the following: (and) ✓

10 (a) For purposes of a petition for guardianship of a child, any of the following:

11 1. The child, if he or she has attained 12 years of age, the child's guardian ad  
12 litem, and ~~the child's~~ counsel. (if any) ✓

13 2. The child's parents, guardian, legal custodian, and physical custodian.

14 ~~3. Any person to whom notice is required to be given under s. 48.27 (3) (b) 1.~~ ✓

15 4. Any individual who is nominated as guardian.

16 5. If the child has no living parent, any individual nominated to act as fiduciary  
17 for the child in a will or other written instrument that was executed by a parent of  
18 the child.

19 6. If the child is receiving any public services or benefits, the county department  
20 or, in a county having a population of 500,000 or more, the department that is  
21 providing the services or benefits, through the person representing the interests of  
22 the public under s. 48.09.

23 7. If the child is an Indian child, the Indian child's Indian custodian and Indian  
24 tribe.

25 8. Any other person that the court may require.

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1 (b) For purposes of proceedings subsequent to an order for guardianship of a  
2 child, any of the following:

3 1. The child, if 12 years of age or over, the child's guardian ad litem, and the  
4 child's counsel.

5 2. The guardian.

6 3. The parents of the child.

7 4. The county of venue, through the person representing the interests of the  
8 public under s. 48.09, if the county has an interest in the guardianship.

9 5. If the child is an Indian child, the Indian child's tribe.

10 6. Any other person that the court may require.

11 (2) APPOINTMENT; NOMINATION; DUTY AND AUTHORITY. (a) *Appointment*. 1. This  
12 section may be used for the appointment of a guardian of the person for a child. An  
13 appointment of a guardian of the estate of a child shall be conducted under the  
14 procedures specified in ch. 54. This section does not prohibit a person from  
15 petitioning a court under s. 48.831, 48.977, or 48.978 for the appointment of a  
16 guardian of the person of a child.

17 2. The court may appoint coguardians of the person for a child under this  
18 section, subject to any conditions that the court imposes. Unless the court orders  
19 otherwise, any decision concerning the child must be concurred in by all coguardians  
20 or is void.

21 (b) *Nomination by parent or child*. 1. A parent may nominate a guardian and  
22 successor guardian for any of his or her children who is in need of guardianship,  
23 including a nomination by will. Subject to the rights of a surviving parent, the court  
24 shall appoint the person nominated as guardian or successor guardian, unless the

1 court finds that appointment of the person nominated is not in the child's best  
2 interests.

3 2. A child who is 12 years of age or over may nominate his or her own guardian,  
4 but if the child is in the armed service or is outside of the state or if other good reason  
5 exists, the court may dispense with the child's right of nomination. If neither parent  
6 of a child who is 12 years of age or over is fit, willing, and able to be appointed  
7 guardian, the court may appoint the nominee of the child.

8 3. In determining who is appointed as guardian, the court shall consider the  
9 nominations of the parents and child and the opinions of the parents and child as to  
10 what is in the best interests of the child, but the best interests of the child as  
11 determined by the court shall control in making the determination when those  
12 nominations and opinions are in conflict with those best interests.

13 (c) *Duties and authority of guardian.* 1. 'Full guardianship.' Subject to subd.  
14 5., a guardian appointed under sub. (3) (f) 2. shall have all of the duties and authority  
15 specified in s. 48.023, unless those duties and that authority are limited under subd.  
16 2.

17 2. 'Limited guardianship.' The court may order that the duties and authority  
18 of a guardian appointed under sub. (3) (f) 2. be limited. The duties and authority of  
19 a limited guardian shall be as specified by the order of appointment under sub. (3)  
20 (f) 2. The duties and authority of a full guardian shall apply to a limited guardian  
21 to the extent relevant to the duties or authority of the limited guardian, except as  
22 limited by the order of appointment. The court may limit the authority of a guardian  
23 with respect to any power to allow the parent to retain such power to make decisions  
24 as is within the parent's ability to exercise effectively and may limit the physical  
25 custody of a guardian to allow shared physical custody with the parent if shared

1 physical custody is in the best interests of the child. The court shall set an expiration  
2 date for a limited guardianship order, which may be extended for good cause shown.

3 3. 'Temporary guardianship.' If it is demonstrated to the court that a child's  
4 particular situation, including the inability of the child's parent to provide for the  
5 care, custody, and control of the child for a temporary period of time, requires the  
6 appointment of a temporary guardian, the court may appoint a temporary guardian  
7 as provided under sub. (4).

8 4. 'Emergency guardianship.' If it is demonstrated to the court that the welfare  
9 of a child requires the immediate appointment of an emergency guardian, the court  
10 may appoint an emergency guardian as provided under sub. (5).

11 5. 'Powers of guardian.' The parent retains all rights and duties accruing to the  
12 parent as a result of the parent-child relationship that are not assigned to the  
13 guardian or otherwise limited by statute or court order. A guardian acting on behalf  
14 of a child may exercise only those powers that the guardian is authorized to exercise  
15 by statute or court order. The court may authorize a guardian to exercise only those  
16 powers that are necessary to provide for the care, custody, and control of the child and  
17 to exercise those powers in a manner that is appropriate to the child.

18 (3) PROCEDURES. (a) *Petition*. Any person, including a child 12 years of age or  
19 over on his or her own behalf, may petition for the appointment of a guardian for a  
20 child. A petition for guardianship may include an application for protective  
21 placement or protective services or both under ch. 55. The petition shall be entitled  
22 "In the interest of .... (child's name), a person under the age of 18" and shall state all  
23 of the following, if known to the petitioner:

24 1. The name, date of birth, and address of the child.

1           2. The names and addresses of the child's parents, current guardian and legal  
2           custodian, if any, proposed guardian, and all other interested persons.

3           3. Whether the petitioner is requesting a full guardianship, a limited  
4           guardianship, a temporary guardianship, or an emergency guardianship.

5           4. If the petitioner is requesting a full guardianship, the facts and  
6           circumstances establishing that the child's parents are unfit, unwilling, or unable to  
7           provide for the care, custody, and control of the child or other compelling facts and  
8           circumstances demonstrating that a full guardianship is necessary.

9           5. If the petitioner is requesting a limited guardianship, the facts and  
10          circumstances establishing that the child's parents need assistance in providing for  
11          the care, custody, and control of the child and a statement of the specific duties and  
12          authority under s. 48.023 sought by the petitioner for the proposed guardian and the  
13          specific parental rights and duties that the petitioner seeks to have transferred.

14          6. If the petitioner is requesting a temporary guardianship, the facts and  
15          circumstances establishing that the child's particular situation, including the  
16          inability of the child's parents to provide for the care, custody, and control of the child  
17          for a temporary period of time, requires the appointment of a temporary guardian;  
18          the reasons for the appointment of a temporary guardian; and the powers requested  
19          for the temporary guardian.

20          7. If the petitioner is requesting an emergency guardianship, the facts and  
21          circumstances establishing that the welfare of the child requires the immediate  
22          appointment of an emergency guardian.

23          8. The facts and circumstances establishing that the proposed guardian is fit,  
24          willing, and able to serve as the child's guardian.

s. 48.028 or ✓

1 9. Whether the proceedings are subject to the Uniform Child Custody  
2 Jurisdiction and Enforcement Act under ch. 822.

3 10. Whether the child may be subject to the federal Indian Child Welfare Act,  
4 25 USC 1901 to 1963 and, if the child may be subject to that act, the names and  
5 addresses of the child's Indian custodian, if any, and Indian tribe, if known.

6 11. If the petitioner knows or has reason to know that the child is an Indian  
7 child, reliable and credible information showing that continued custody of the child  
8 by the child's parent or Indian custodian is likely to result in serious emotional or  
9 physical damage to the child under s. 48.028 (4) (d) 1. and that active efforts under  
10 s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child's family  
11 and that those efforts have proved unsuccessful.

12 12. Whether the petitioner is aware of any guardianship or other related  
13 proceeding involving the child that is pending in another state or county and, if so,  
14 the details of the guardianship or related proceeding.

15 (b) *Service of petition and notice.* 1. Except as provided in subd. 3., the  
16 petitioner shall cause the petition and notice of the time and place of the hearing  
17 under par. (d) to be served at least 10 days before the time of the hearing upon all  
18 interested persons, unless notice is specifically waived by an interested person or by  
19 the court for good cause shown.

20 2. A notice shall be in writing. A copy of the petition and any other required  
21 document shall be attached to the notice. Except as provided in subd. 3., notice shall  
22 be delivered in person or by 1st class mail. Notice is considered to be given by proof  
23 of personal delivery, by proof that the notice was mailed to the last-known address  
24 of the recipient, or, if the recipient is an adult, by the written admission of service of  
25 the person served.

1           3. If the petitioner knows or has reason to know that the child is an Indian child,  
2 notice to the Indian child's parent, Indian custodian, and Indian tribe shall be  
3 provided in the manner specified in s. 48.028 (4) (a). No hearing may be held under  
4 par. (d) until at least 10 days after receipt of the notice by the Indian child's parent,  
5 Indian custodian, and Indian tribe or, if the identity or location of the Indian child's  
6 parent, Indian custodian, or tribe cannot be determined, until at least 15 days after  
7 receipt of the notice by the U.S. secretary of the interior. On request of the Indian  
8 child's parent, Indian custodian, or Indian tribe, the court shall grant a continuance  
9 of up to 20 additional days to enable the requester to prepare for the hearing.

10           (c) *Statement by proposed guardian.* 1. At least 96 hours before the hearing  
11 under par. (d), the proposed guardian shall submit to the court a sworn and notarized  
12 statement as to the number of persons for whom the proposed guardian is  
13 responsible, whether as a parent, guardian, or legal custodian, as to the proposed  
14 guardian's income, assets, debts, and living expenses, and as to whether the  
15 proposed guardian is currently charged with or has been convicted of a crime or has  
16 been determined under s. 48.981 (3) (c) to have abused or neglected a child.

17           2. If subd. 1. applies to the proposed guardian, he or she shall include in the  
18 sworn and notarized statement a description of the circumstances surrounding the  
19 applicable event under subd. 1.

20           (d) *Hearing.* 1. The initial hearing on a petition for guardianship, other than  
21 a petition for emergency guardianship under sub. (5), shall be heard within 30 days  
22 after the filing of the petition. At the hearing the court shall first determine whether  
23 any party wishes to contest the petition. If the petition is not contested, the court  
24 shall immediately proceed to a fact-finding and dispositional hearing, unless an  
25 adjournment is requested. If the petition is contested or if an adjournment is

1 requested, the court shall set a date for a fact-finding and dispositional hearing that  
2 allows reasonable time for the parties to prepare but is not more than 30 days after  
3 the initial hearing. The court shall hold the fact-finding and dispositional hearing  
4 at the time specified or set by the court under this subdivision, at which any  
5 interested person described in subd. 3. may present evidence, including expert  
6 testimony, and argument relating to the allegations in the petition.

7 2. If the petition is contested, <sup>on the request of</sup> any interested person ~~that is a necessary party~~  
8 ~~under s. 803.03 requests~~ or on the court's own motion, the court may order the county  
9 department, a licensed child welfare agency, or, in a county having a population of  
10 500,000 or more, the department or an agency under contract with the department  
11 to conduct an investigation to determine whether the child is a proper subject for  
12 guardianship and whether the proposed guardian's home is suitable for the child.  
13 The person conducting the investigation shall file a report of its investigation with  
14 the court at least 96 hours before the fact-finding and dispositional hearing. The  
15 parents of the child and the proposed guardian shall reimburse the person  
16 conducting the investigation for the cost of the investigation according to a fee  
17 schedule established by the department based on ability to pay.

18 3. The proposed guardian and any proposed standby guardian shall be  
19 physically present at the hearing unless the court excuses the attendance of either  
20 or, for good cause shown, permits attendance by telephone. The child is not required  
21 to attend the hearing, but if the child has nominated the proposed guardian, the child  
22 shall provide to his or her guardian ad litem sufficient information for the guardian  
23 ad litem to advise the court whether the nomination is in the best interests of the  
24 child. An interested person may participate in the hearing on the petition if the court  
25 determines that the interested person is a necessary party under s. 803.03.

1 (e) *Dispositional factors*. In determining the appropriate disposition under this  
2 section, the court shall consider all of the following:

3 1. Any nominations made under sub. (2) (b) 1. or 2. and the opinions of the  
4 parents and child as to what is in the best interests of the child, but the best interests  
5 of the child as determined by the court shall control in making the determination  
6 when those nominations and opinions are in conflict with those best interests.

7 2. Whether the proposed guardian would be fit, willing, and able to serve as the  
8 guardian of the child.

9 3. If the child is an Indian child, the order of placement preference under s.  
10 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as  
11 described in s. 48.028 (7) (e), for departing from that order.

12 4. Whether appointment of the proposed guardian as the child's guardian is in  
13 the best interests of the child.

14 (f) *Disposition*. At the conclusion of the hearing under par. (d), the court shall  
15 grant one of the following dispositions:

16 1. A disposition dismissing the petition if the court <sup>finds</sup> ~~determines~~ that the <sup>petitioner has not proved the</sup>  
17 ~~allegations in the petition have not been proved~~ <sup>allegations</sup> by clear and convincing evidence or <sup>determines</sup>  
18 that appointment of the proposed guardian as the child's guardian is not in the best  
19 interests of the child. <sup>petitioner has proved the</sup>

20 2. A disposition ordering that the proposed guardian be appointed as the child's  
21 full guardian under sub. (2) (c) 1., limited guardian under sub. (2) (c) 2., or temporary  
22 guardian under sub. (2) (c) 3., if the court <sup>finds</sup> ~~determines~~ that the <sup>allegations</sup> in the  
23 ~~petition have been proved~~ <sup>allegations</sup> by clear and convincing evidence and <sup>determines</sup>  
24 that such an appointment is in the best interests of the child. The disposition may also designate  
25 an amount of support to be paid by the child's parents and, subject to sub. (12), may

✓


1 include reasonable rules of parental visitation. If the court orders the proposed  
2 guardian to be appointed as the child's guardian, the court shall issue letters of  
3 guardianship ~~under the seal of the court~~ to the guardian.

4 (4) TEMPORARY GUARDIANSHIPS. (a) *Duration and extent of authority.* The court  
5 may appoint a temporary guardian for a child for a period not to exceed 180 days,  
6 except that the court may extend this period for good cause shown for one additional  
7 180-day period. The court's determination and order appointing the temporary  
8 guardian shall specify the authority of the temporary guardian, which shall be  
9 limited to those acts that are reasonably related to the reasons for the appointment  
10 that are specified in the petition for temporary guardianship. The authority of the  
11 temporary guardian is limited to the performance of those acts stated in the order  
12 of appointment.

13 (b) *Procedures for appointment.* A petition for the appointment of a temporary  
14 guardian shall be heard in the same manner and is subject to the same requirements  
15 as provided in this section for the appointment of a full or limited guardian.

16 (c) *Cessation of powers.* The duties and powers of the temporary guardian cease  
17 upon the expiration of the time period specified in par. (a), or the termination as  
18 determined by the court of the situation of the child that was the cause of the  
19 temporary guardianship. Upon cessation of a temporary guardianship, the  
20 temporary guardian shall file with the court any report that the court requires.

21 (5) EMERGENCY GUARDIANSHIPS. (a) *Duration and extent of authority.* The court  
22 may appoint an emergency guardian for a child for a period not to exceed 60 days.  
23 The court's determination and order appointing the emergency guardian shall  
24 specify the authority of the emergency guardian and shall be limited to those acts  
25 that are reasonably related to the reasons for the appointment that are specified in



1 the petition for emergency guardianship. The authority of the emergency guardian  
2 is limited to the performance of those acts stated in the order of appointment.

3 (b) *Procedures for appointment.* All of the following procedures apply to the  
4 appointment of an emergency guardian:

5 1. Any person may petition for the appointment of an emergency guardian for  
6 a child. The petition shall contain the information required under sub. (3) (a) and  
7 shall specify the reasons for the appointment of an emergency guardian and the  
8 powers requested for the emergency guardian.

9 2. The petitioner shall give notice of the petition and of the time and place of  
10 the hearing under subd. 4. to the child, if 12 years of age or over, the child's guardian  
11 ad litem, and the child's counsel, if any; the child's parents, guardian, and legal  
12 custodian; and the person nominated as emergency guardian. The notice and a copy  
13 of the petition shall be served as soon after the filing of the petition as possible, shall  
14 be served by the most practical means possible, including personal service or service  
15 by electronic mail or telephone, and shall include notice of the right to request the  
16 appointment of counsel or to retain counsel of the party's own choosing and of the  
17 right to petition for reconsideration or modification of the emergency guardianship  
18 under subd. 5. If the petitioner serves notice of the hearing after the hearing is  
19 conducted and the court has entered an order, the petitioner shall include the court's  
20 order with the notice of the hearing.

21 3. The court shall appoint a guardian ad litem for the child as soon as possible  
22 after the filing of the petition. The court shall attempt to appoint the guardian ad  
23 litem before the hearing on the petition, but may appoint the guardian ad litem after  
24 the hearing if the court finds that exigent circumstances require the immediate  
25 appointment of an emergency guardian. The guardian ad litem shall attempt to meet

1 with the child before the hearing or as soon as is practicable after the hearing, but  
2 not later than 3 calendar days after the hearing. The guardian ad litem shall report  
3 to the court on the advisability of the emergency guardianship at the hearing or not  
4 later than 7 calendar days after the hearing.

5 4. The court shall hold a hearing on the emergency guardianship petition as  
6 soon as possible after the filing of the petition or, for good cause shown, may issue a  
7 temporary order appointing an emergency guardian without a hearing which shall  
8 remain in effect until a hearing is held on the emergency guardianship petition. If  
9 appointed prior to the hearing, the guardian ad litem shall attend the hearing in  
10 person or by telephone.

11 5. If the court appoints an emergency guardian, any person specified in subd.  
12 2. may petition for reconsideration or modification of the emergency guardianship  
13 and the court shall hold a rehearing on the issue of appointment of the emergency  
14 guardian within 30 calendar days after the filing of the petition.

15 (c) *Immunity.* An emergency guardian of a child is immune from civil liability  
16 for his or her acts or omissions in performing the duties of emergency guardianship  
17 if he or she performs the duties in good faith, in the best interests of the child, and  
18 with the degree of diligence and prudence that an ordinarily prudent person  
19 exercises in his or her own affairs.

20 (d) *Cessation of powers.* The duties and powers of the emergency guardian  
21 cease upon the expiration of the time period specified in par. (a), or the termination  
22 as determined by the court of the situation of the child that was the cause of the  
23 emergency guardianship. Upon cessation of an emergency guardianship, the  
24 emergency guardian shall file with the court any report that the court requires.

1           **(6) STANDBY GUARDIANSHIP.** (a) *Petition.* A person may at any time bring a  
2 petition for the appointment of a standby guardian of a child, except that, as specified  
3 in s. 48.978, a petition for the appointment of a standby guardian of the person or  
4 estate or both of a child to assume the duty and authority of guardianship on the  
5 incapacity, death, or debilitation and consent, of the child's parent may be brought  
6 under s. 48.978.

7           (b) *Appointment.* At any hearing conducted under this subsection the court  
8 may designate one or more standby guardians whose appointment shall become  
9 effective immediately upon the death, unwillingness or inability to act, resignation,  
10 or removal by the court of the initially appointed guardian or during a period, as  
11 determined by the initially appointed guardian, when the initially appointed  
12 guardian is temporarily unable to fulfill his or her duties, including during an  
13 extended vacation or illness. The powers and duties of the standby guardian shall  
14 be the same as those of the initially appointed guardian. The standby guardian shall  
15 receive a copy of the court order establishing or modifying the initial guardianship  
16 and of the order designating the standby guardian. Upon assuming office, the  
17 standby guardian shall so notify the court. Upon notification, the court shall issue  
18 new letters of guardianship that specify that the standby guardianship is permanent  
19 or that specify the time period for a temporary standby guardianship.

20           **(7) SUCCESSOR GUARDIAN.** (a) *Appointment.* If a guardian dies, is removed by  
21 order of the court, or resigns and the resignation is accepted by the court, the court,  
22 on its own motion or upon petition of any interested person, may appoint a competent  
23 and suitable person as successor guardian. The court may, upon request of any  
24 interested person or on its own motion, direct that the petition or motion for the  
25 appointment of a successor guardian be heard in the same manner and subject to the

1 same requirements as provided under this section for an original appointment of a  
2 guardian.

3 (b) *Notice.* If the appointment under par. (a) is made without hearing, the  
4 successor guardian shall provide notice to all interested persons of the appointment,  
5 the right to request the appointment of counsel or to retain counsel of the interested  
6 person's own choosing, and the right to petition for reconsideration of the  
7 appointment of the successor guardian. The notice shall be served personally or by  
8 mail not later than 10 days after the appointment.

9 (8) MODIFICATION OF GUARDIANSHIP ORDER. (a) Any interested person or other  
10 person approved by the court may request a modification of a guardianship order  
11 entered under this subsection or sub. (3) (f) 2. or the court may, on its own motion,  
12 propose such a modification. The request or motion shall set forth in detail the  
13 nature of the proposed modification, shall allege facts sufficient to show that there  
14 has been a substantial change in circumstances since the last order affecting the  
15 guardianship was entered and that the proposed modification would be in the best  
16 interests of the child, and shall allege any other information that affects the  
17 advisability of the court's disposition.

18 (b) The court shall hold a hearing on the matter prior to any modification of the  
19 guardianship order if the request or motion indicates that new information is  
20 available that affects the advisability of the court's guardianship order, unless  
21 written waivers of objections to the modification are signed by all interested persons  
22 and the court approves the waivers.

23 (c) If a hearing is to be held, the court shall notify all interested persons at least  
24 7 days prior to the hearing of the date, place, and purpose of the hearing. A copy of  
25 the request or proposal shall be attached to the notice. The court may order a

the person proposing the modification has

1 modification if, at the hearing, the court finds that ~~it has been~~ approved by clear and  
2 convincing evidence that there has been a substantial change in circumstances and  
3 ~~if the court~~ determines that a modification would be in the best interests of the child.

4 (9) REVIEW OF CONDUCT OF GUARDIAN. (a) *Continuing jurisdiction of court.* The  
5 court that appointed the guardian of a child has continuing jurisdiction over the  
6 guardian.

7 (b) *Cause for court action against a guardian.* The court may impose a remedy  
8 under par. (d) if a guardian of a child does any of the following:

- 9 1. Abuses or neglects the child or knowingly permits others to do so.  
10 2. Fails to disclose information specified in sub. (3) (c) that would have  
11 prevented appointment of the person as guardian.  
12 3. Otherwise fails to perform any of his or her duties as a guardian under s.  
13 48.023.

14 (c) *Procedure.* Any interested person or other person approved by the court may  
15 file a petition requesting a review of the conduct of a guardian or the court, on its own  
16 motion, may propose such a review. The request or motion shall allege facts  
17 sufficient to show cause under par. (b) for the court to impose a remedy under par.  
18 (d). The court shall hold a hearing on the request or motion not more than 30 days  
19 after the filing of the request or proposal. Not less than 7 days before the date of the  
20 hearing, the court shall cause notice of the hearing to be provided to the child, his or  
21 her or parents, the guardian, and any other persons as determined by the court. A  
22 copy of the request or motion shall be attached to the notice.

23 (d) *Remedies of the court.* If after hearing the court finds by clear and  
24 convincing evidence cause as specified in par. (b) to impose a remedy under this  
25 paragraph, the court may do any of the following:

✓

1. Remove the guardian.

2. Remove the guardian and appoint a successor guardian.

3. Enter any other order that may be necessary or appropriate to compel the guardian to carry out the guardian's duties, including an order setting reasonable rules of visitation with the child.

4. Modify the duties and authority of the guardian.

5. Require the guardian to pay any costs of the proceeding, including costs of service and attorney fees, if the court finds that the guardian's conduct was egregious.

(10) TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* A guardianship under this section shall continue until the child attains the age of 18 years unless any of the following occurs:

1. The guardianship is for a lesser period of time and that time has expired.

2. The child marries.

3. The child dies.

4. The child's residence changes from this state to another state and a guardian is appointed in the new state of residence.

5. The guardian dies, or resigns and the resignation is accepted by the court, and a successor guardian is not appointed.

6. The guardian is removed for cause under sub. (9) (d) 1. and a successor guardian is not appointed.

7. The court terminates the guardianship on the request of a parent of the child under par. (b).

(b) *Termination on request of parent.* 1. A parent of the child may file a petition requesting that a guardianship order entered under sub. (3) (f) 2. (4), (5), or (6) be


1 terminated. The petition shall allege facts sufficient to show that there has been a  
2 substantial change in circumstances since the last order affecting the guardianship  
3 was entered, that the parent is fit, willing, and able to carry out the duties of a  
4 guardian, and that termination of the guardianship would be in the best interests  
5 of the child.

6 2. The court shall hold a hearing on the petition unless written waivers of  
7 objections to termination of the guardianship are signed by all interested persons  
8 and the court approves the waivers.

9 3. If a hearing is to be held, by no less than 7 days before the date of the hearing  
10 the court shall cause notice of the hearing to be provided to the child, his or her  
11 parents, the guardian, and any other persons as determined by the court. A copy of  
12 the request or proposal shall be attached to the notice. The court shall terminate the  
13 guardianship if the court finds that ~~it has been~~ <sup>the parent has</sup> proved by clear and convincing  
14 evidence that ~~the parent~~ <sup>he or she</sup> has remedied the unfitness, unwillingness, or inability to  
15 provide for the care, custody, and control of the child or other compelling facts and  
16 circumstances on which the guardianship was granted and that ~~the parent~~ <sup>he or she</sup> is now  
17 fit, willing, and able to carry out the duties of a guardian and if ~~the court~~ <sup>the court</sup> determines  
18 that termination of the guardianship would be in the best interests of the child.

19 **SECTION 19.** 48.977 (2) (a) of the statutes is amended to read:

20 48.977 (2) (a) That the child has been adjudged to be in need of protection or  
21 services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or  
22 (11m) or 938.13 (4) or (12), or has been adjudged delinquent under s. 938.12, and been  
23 placed, or continued in a placement, outside of his or her home pursuant to one or  
24 more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.34, 938.345, 938.357,  
25 938.363, or 938.365 ~~or~~, that the child has been so adjudged and placement of the child



1 in the home of a guardian under this section has been recommended under s. 48.33  
2 (1) or 938.33 (1), or that the child has had a guardian of the person appointed for him  
3 or her under ch. 54, 2007 stats., or ch. 880, 2003 stats., and is placed in the home of  
4 the guardian.

5 **SECTION 20.** 48.977 (2) (e) of the statutes is amended to read:

6 48.977 (2) (e) That the child's parent is neglecting, refusing, or unable to carry  
7 out the duties of a guardian or is not meeting the conditions established in the court  
8 order described in par. (a) for the safe return of the child to the home or, if the child  
9 has 2 parents, both parents are neglecting, refusing or unable to carry out the duties  
10 of a guardian those duties or are not meeting those conditions.

11 **SECTION 21.** 48.977 (2) (f) of the statutes is amended to read:

12 48.977 (2) (f) That the agency primarily responsible for providing services to  
13 the child under a court order has made reasonable efforts to make it possible for the  
14 child to return to his or her home, while assuring that the child's health and safety  
15 are the paramount concerns, but that reunification of the child with the child's  
16 parent or parents is unlikely or contrary to the best interests of the child and that  
17 further reunification efforts are unlikely to be made or are contrary to the best  
18 interests of the child or that the agency primarily responsible for providing services  
19 to the child under a court order has made reasonable efforts to prevent the removal  
20 of the child from his or her home, while assuring the child's health and safety, but that  
21 continued placement of the child in the home would be contrary to the welfare of the  
22 child, except that the court is not required to find that the agency has made those  
23 reasonable efforts with respect to a parent of the child if any of the circumstances  
24 specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the  
25 findings specified in this paragraph on a case-by-case basis based on circumstances

1 specific to the child and shall document or reference the specific information on  
2 which those findings are based in the guardianship order. A guardianship order that  
3 merely references this paragraph without documenting or referencing that specific  
4 information in the order or an amended guardianship order that retroactively  
5 corrects an earlier guardianship order that does not comply with this paragraph is  
6 not sufficient to comply with this paragraph. This paragraph does not apply to a  
7 child who is placed in the home of a guardian under ch. 54, 2007 stats., or ch. 880,  
8 2003 stats., and who is not receiving services from an agency under a court order.

9 **SECTION 22.** 48.977 (4) (b) 3. of the statutes is amended to read:

10 48.977 (4) (b) 3. The date on which the child was adjudged in need of protection  
11 or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or  
12 (11m) or 938.13 (4) or (12), or was adjudicated delinquent under s. 938.12, and the  
13 dates on which the child has been placed, or continued in a placement, outside of his  
14 or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363,  
15 48.365, 938.34, 938.345, 938.357, 938.363, or 938.365; or, if the child has been so  
16 adjudged, but not so placed, the date of the report under s. 48.33 (1) or 938.33 (1) in  
17 which placement of the child in the home of the person is recommended; or, if the  
18 child has had a guardian of the person appointed for him or her under ch. 54, 2007  
19 stats., or ch. 880, 2003 stats., the date on which the child was placed in the home of  
20 the guardian.

21 **SECTION 23.** 48.977 (4) (c) 2. of the statutes, as affected by 2009 Wisconsin Act  
22 94, is amended to read:

23 48.977 (4) (c) 2. Except as provided in subd. 2m., service shall be made by 1st  
24 class mail at least 7 days before the hearing or by personal service at least 7 days  
25 before the hearing ~~or, if with reasonable diligence a party specified in subd. 1. cannot~~

Insert  
33-20

1 be served by mail or personal service, service shall be made by publication of a notice  
2 published as a class 1 notice under ch. 985. In determining which newspaper is likely  
3 to give notice as required under s. 985.02 (1), the petitioner shall consider the  
4 residence of the party, if known, or the residence of the relatives of the party, if  
5 known, or the last known location of the party. Service is considered to be made by  
6 proof that the petition and notice under subd. 1. were mailed to the last-known  
7 address of the recipient, by proof of personal delivery of that petition and notice, or,  
8 if the recipient is an adult, by the written admission of service of the person served.

9 SECTION 24. 48.977 (4) (i) of the statutes is amended to read:

10 48.977 (4) (i) *Effect of disposition on permanency plan review process.* After a  
11 disposition under par. (h), the child's permanency plan shall continue to be reviewed  
12 under s. 48.38 (5) or 938.38 (5), if applicable required under s. 48.38 (2) or 938.38 (2).

13 SECTION 25. 48.977 (8) of the statutes is amended to read:

14 48.977 (8) RELATIONSHIP TO CH. 54 AND CH. 880, 2003 STATS OTHER GUARDIANSHIP  
15 PROCEDURES. (a) This section does not abridge the duties or authority of a guardian  
16 appointed under s. 48.976, ch. 54, 2007 stats., or ch. 880, 2003 stats.

17 (b) Nothing in this section prohibits an individual from petitioning a court  
18 under ~~ch. 54~~ s. 48.976 for appointment of a guardian.

19 SECTION 26. 48.978 (7) of the statutes is amended to read:

20 48.978 (7) RELATIONSHIP TO CH. 54 OTHER GUARDIANSHIP PROCEDURES. (a) Except  
21 when a different right, remedy, or procedure is provided under this section, the  
22 rights, remedies, and procedures provided in s. 48.976 or ch. 54, whichever is  
23 applicable, shall govern a standby guardianship created under this section.

24 (b) This section does not abridge the duties or authority of a guardian appointed  
25 under s. 48.976, ch. 880, 2003 stats., or ch. 54.

(c) Nothing in this section prohibits an individual from petitioning a court for the appointment of a guardian of the person under s. 48.976 or a guardian of the estate under ch. 54.

**SECTION 27.** 48.979 of the statutes is created to read:

**48.979 Delegation of power by parent, guardian, or legal custodian.** A parent, guardian, or legal custodian of a child, by a properly executed power of attorney, may delegate to another person, for a period not to exceed one year, any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child.

**SECTION 28.** 49.32 (1) (am) of the statutes is amended to read:

49.32 (1) (am) Paragraph (a) does not prevent the department or a county department under s. 46.22 or 46.23 from charging and collecting the cost of adoptive placement investigations and child care as authorized under s. 48.837 (7) or the cost of guardianship investigations as authorized under s. 48.976 (3) (d) 2.

**SECTION 29.** 51.30 (4) (b) 18. a. of the statutes is amended to read:

51.30 (4) (b) 18. a. In this subdivision, "abuse" has the meaning given in s. 51.62 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under, ~~or~~ s. 48.976 or 54.10 or s. 880.33, 2003 stats.

**SECTION 30.** 51.30 (4) (b) 18. c. of the statutes is amended to read:

51.30 (4) (b) 18. c. If the patient, regardless of age, has a guardian appointed under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s.

1 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or s. 880.33,  
2 2003 stats., information concerning the patient that is obtainable by staff members  
3 of the agency or nonprofit corporation with which the agency has contracted is  
4 limited, except as provided in subd. 18. e., to the nature of an alleged rights violation,  
5 if any; the name, birth date and county of residence of the patient; information  
6 regarding whether the patient was voluntarily admitted, involuntarily committed  
7 or protectively placed and the date and place of admission, placement or  
8 commitment; and the name, address and telephone number of the guardian of the  
9 patient and the date and place of the guardian's appointment or, if the patient is a  
10 minor with developmental disability who has a parent or has a guardian appointed  
11 under s. 48.831 and does not have a guardian appointed under s. 48.976 or 54.10 or  
12 s. 880.33, 2003 stats., the name, address and telephone number of the parent or  
13 guardian appointed under s. 48.831 of the patient.

14 **SECTION 31.** 54.01 (10) of the statutes is amended to read:

15 54.01 (10) "Guardian" means a person appointed by a court under s. 54.10 to  
16 manage the income and assets and provide for the essential requirements for health  
17 and safety and the personal needs of ~~a minor~~, an individual found incompetent, or  
18 a spendthrift or to manage the income and assets of a minor.

19 **SECTION 32.** 54.10 (1) of the statutes is amended to read:

20 54.10 (1) A court may appoint ~~a guardian of the person or~~ a guardian of the  
21 estate, ~~or both~~, for an individual if the court determines that the individual is a  
22 minor. Except as provided in ss. 48.831, 48.977, and 48.978, an appointment of a  
23 guardian of the person of a minor shall be conducted under the procedures specified  
24 in s. 48.976.

25 **SECTION 33.** 54.52 (1) of the statutes is amended to read:

1           54.52 (1) A person may at any time bring a petition for the appointment of a  
2       standby guardian of the person or estate of an individual who is determined under  
3       s. 54.10 to be incompetent, ~~a minor~~, or a spendthrift or for the appointment of a  
4       standby guardian of the estate of a minor, except that, as specified in s. ~~48.97~~ 48.978,  
5       a petition for the appointment of a standby guardian of the person or ~~property estate~~,  
6       or both, of a minor to assume the duty and authority of guardianship on the  
7       incapacity, death, or debilitation and consent, of the minor's parent may be brought  
8       under s. 48.978.

9           **SECTION 34.** 54.56 of the statutes is renumbered 48.976 (11) and amended to  
10       read:

11           48.976 (11) VISITATION BY A MINOR'S CHILD'S GRANDPARENTS AND STEPPARENTS. (a)  
12       In this ~~section~~ subsection, "stepparent" means the surviving spouse of a deceased  
13       parent of a ~~minor~~ child, whether or not the surviving spouse has remarried.

14           (b) If one or both parents of a ~~minor~~ child are deceased and the ~~minor~~ child is  
15       in the custody of the surviving parent or any other person, a grandparent or  
16       stepparent of the ~~minor~~ child may petition for visitation privileges with respect to the  
17       ~~minor~~ child, whether or not the person with custody is married. The grandparent  
18       or stepparent may file the petition in a guardianship or temporary guardianship  
19       proceeding under this ~~chapter~~ section that affects the ~~minor~~ child or may file the  
20       petition to commence an independent action under this ~~chapter~~ subsection. Except  
21       as provided in ~~sub. (3m)~~ par. (cm), the court may grant reasonable visitation  
22       privileges to the grandparent or stepparent if the surviving parent or other person  
23       who has custody of the ~~minor~~ child has notice of the hearing and if the court  
24       determines that visitation is in the best interest of the ~~minor~~ child.

1 (c) Whenever possible, in making a determination under ~~sub. (2)~~ par. (b), the  
2 court shall consider the wishes of the ~~minor~~ child.

3 (cm) 1. Except as provided in ~~par. (b)~~ subd. 2., the court may not grant visitation  
4 privileges to a grandparent or stepparent under this ~~section~~ subsection if the  
5 grandparent or stepparent has been convicted under s. 940.01 of the first-degree  
6 intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of  
7 a parent of the ~~minor~~ child, and the conviction has not been reversed, set aside, or  
8 vacated.

9 2. ~~Paragraph (a)~~ Subdivision 1. does not apply if the court determines by clear  
10 and convincing evidence that the visitation would be in the best interests of the ~~minor~~  
11 child. The court shall consider the wishes of the ~~minor~~ child in making the  
12 determination.

13 (d) The court may issue any necessary order to enforce a visitation order that  
14 is granted under this ~~section~~ subsection, and may from time to time modify the  
15 visitation privileges or enforcement order for good cause shown.

16 (dm) 1. If a grandparent or stepparent granted visitation privileges with  
17 respect to a ~~minor~~ child under this ~~section~~ subsection is convicted under s. 940.01 of  
18 the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree  
19 intentional homicide, of a parent of the ~~minor~~ child, and the conviction has not been  
20 reversed, set aside, or vacated, the court shall modify the visitation order by denying  
21 visitation with the ~~minor~~ child upon petition, motion, or order to show cause by a  
22 person having custody of the ~~minor~~ child, or upon the court's own motion, and upon  
23 notice to the grandparent or stepparent granted visitation privileges.

24 2. ~~Paragraph (a)~~ Subdivision 1. does not apply if the court determines by clear  
25 and convincing evidence that the visitation would be in the best interests of the ~~minor~~

1 child. The court shall consider the wishes of the ~~minor~~ child in making the  
2 determination.

3 (e) This ~~section~~ subsection applies to every ~~minor~~ child in this state whose  
4 parent or parents are deceased, regardless of the date of death of the parent or  
5 parents.

6 **SECTION 35.** 54.57 of the statutes is renumbered 48.976 (12) and amended to  
7 read:

8 48.976 (12) PROHIBITING VISITATION OR PHYSICAL PLACEMENT IF ~~A~~ PARENT KILLS  
9 OTHER PARENT. (a) Except as provided in ~~sub. (2), in an action under this chapter that~~  
10 ~~affects a minor par. (b),~~ a court may not grant to a parent of the ~~minor~~ a child who  
11 is the subject of a proceeding under this section visitation or physical placement  
12 rights with the ~~minor~~ child if the parent has been convicted under s. 940.01 of the  
13 first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional  
14 homicide, of the ~~minor's~~ child's other parent, and the conviction has not been  
15 reversed, set aside, or vacated.

16 (b) ~~Subsection (1) Paragraph (a)~~ does not apply if the court determines by clear  
17 and convincing evidence that visitation or periods of physical placement would be in  
18 the best interests of the ~~minor~~ child. The court shall consider the wishes of the ~~minor~~  
19 child in making the determination.

20 **SECTION 36.** 55.03 (1) of the statutes is amended to read:

21 55.03 (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting  
22 as a guardian appointed under s. 48.976, ch. 880, 2003 stats., or ch. 54, 2007 stats.,  
23 may be a provider of protective services or protective placement for its ward under  
24 this chapter.

25 **SECTION 37.** 55.10 (4) (intro.) of the statutes is amended to read:

1           55.10 (4) RIGHTS. (intro.) Sections 54.42, 54.44, and 54.46 and the following  
2 provisions apply to all hearings under this chapter involving protective placement  
3 or protective services for an adult, and s. 48.976 and the following provisions apply  
4 to all hearings under this chapter involving protective placement or protective  
5 services for a minor, except transfers of placement under s. 55.15 and summary  
6 hearings under ss. 55.18 (3) (d) and 55.19 (3) (d):

7           **SECTION 38.** 55.10 (4) (a) of the statutes is amended to read:

8           55.10 (4) (a) *Counsel.* The individual sought to be protected has the right to  
9 counsel whether or not the individual is present at the hearing on the petition. The  
10 court shall require representation by full legal counsel whenever the petition alleges  
11 that the individual is not competent to refuse psychotropic medication under s. 55.14,  
12 the individual sought to be protected requested such representation at least 72 hours  
13 before the hearing, the guardian ad litem or any other person states that the  
14 individual sought to be protected is opposed to the petition, or the court determines  
15 that the interests of justice require it. If the individual sought to be protected or any  
16 other person on his or her behalf requests but is unable to obtain legal counsel, the  
17 court shall refer the individual to the state public defender as provided under s.  
18 55.105 for appointment of legal counsel. If the individual sought to be protected is  
19 represented by counsel appointed under s. 977.08 in a proceeding for the  
20 appointment of a guardian under s. 48.976 or ch. 54, the court shall order the counsel  
21 appointed under s. 977.08 to represent under this section the individual sought to  
22 be protected.

23           **SECTION 39.** 115.76 (12) (b) 2. of the statutes is amended to read:

24           115.76 (12) (b) 2. The state, a county, or a child welfare agency, if a child was  
25 made a ward of the state, county, or child welfare agency under ch. 54, 2007 stats.,

1 or ch. 880, 2003 stats., or if a child has been placed in the legal custody or  
2 guardianship of the state, county, or child welfare agency under ch. 48 or ~~ch.~~ 767.

3 **SECTION 40.** 146.82 (2) (a) 9. a. of the statutes is amended to read:

4 146.82 (2) (a) 9. a. In this subdivision, "abuse" has the meaning given in s. 51.62  
5 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the  
6 meaning given in s. 48.02 (13), except that "parent" does not include the parent of a  
7 minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11),  
8 or for whom a guardian is appointed under s. 48.976 or 54.10 or s. 880.33, 2003 stats.

9 **SECTION 41.** 146.82 (2) (a) 9. c. of the statutes is amended to read:

10 146.82 (2) (a) 9. c. If the patient, regardless of age, has a guardian appointed  
11 under s. 48.976 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with  
12 developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a  
13 guardian appointed under s. 48.831 and does not have a guardian appointed under  
14 s. 48.976 or 54.10 or s. 880.33, 2003 stats., information concerning the patient that  
15 is obtainable by staff members of the agency or nonprofit corporation with which the  
16 agency has contracted is limited, except as provided in subd. 9. e., to the nature of  
17 an alleged rights violation, if any; the name, birth date and county of residence of the  
18 patient; information regarding whether the patient was voluntarily admitted,  
19 involuntarily committed or protectively placed and the date and place of admission,  
20 placement or commitment; and the name, address and telephone number of the  
21 guardian of the patient and the date and place of the guardian's appointment or, if  
22 the patient is a minor with developmental disability who has a parent or has a  
23 guardian appointed under s. 48.831 and does not have a guardian appointed under  
24 s. 48.976 or 54.10 or s. 880.33, 2003 stats., the name, address and telephone number  
25 of the parent or guardian appointed under s. 48.831 of the patient.

1           **SECTION 42.** 214.37 (4) (k) 1. of the statutes is amended to read:

2           214.37 (4) (k) 1. An affidavit stating that the person has standing under s.  
3           867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or assignment  
4           of a decedent's estate or that the person is an heir of the decedent, or was guardian,  
5           as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the estate of the decedent  
6           at the time of the decedent's death, and may obtain transfer of property of a decedent  
7           under s. 867.03.

8           **SECTION 43.** 215.26 (8) (e) 1. of the statutes is amended to read:

9           215.26 (8) (e) 1. Submits an affidavit stating that the person has standing  
10          under s. 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or  
11          assignment of a decedent's estate or that the person is an heir of the decedent, or was  
12          guardian, as defined in s. 54.01 (10) or s. 880.01 (3), 2003 stats., of the estate of the  
13          decedent at the time of the decedent's death, and may obtain transfer of property of  
14          a decedent under s. 867.03; and

15          **SECTION 44.** 757.69 (1m) (e) of the statutes is amended to read:

16          757.69 (1m) (e) Conduct hearings, make findings, or issue orders in  
17          proceedings under s. 48.976, 48.977, or 48.978.

18          **SECTION 45.** 808.075 (4) (a) 9m. of the statutes is created to read:

19          808.075 (4) (a) 9m. Review of the conduct of a guardian under s. 48.976 (9).

20          **SECTION 46.** 808.075 (4) (a) 11. of the statutes is amended to read:

21          808.075 (4) (a) 11. Termination of guardianship under s. 48.976 (10) or 48.977  
22          (7), including removal of a guardian.

23          **SECTION 47.** 808.075 (4) (a) 13. of the statutes is created to read:

24          808.075 (4) (a) 13. Appointment of a successor guardian under s. 48.976 (7).

**2009-2010 DRAFTING INSERT  
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LEGISLATIVE REFERENCE BUREAU**

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**SECTION 1.** 48.255 (1) (cm) of the statutes, as affected by 2009 Wisconsin Act 94, is amended to read:

48.255 (1) (cm) Whether the child may be subject to s. 48.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to s. 48.028 or that act, the names and addresses of the child's Indian custodian, if any, and Indian tribe, if known.

History: 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109; 2009 a. 94.

**SECTION 2.** 48.255 (1m) (d) of the statutes, as affected by 2009 Wisconsin Act 94, is amended to read:

48.255 (1m) (d) Whether the unborn child, when born, may be subject to s. 48.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the unborn child may be subject to s. 48.028 or that act, the name and address of the Indian tribe in which the unborn child may be eligible for affiliation when born, if known.

History: 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109; 2009 a. 94.

(END OF INSERT)

(INSERT 13-2)

**SECTION 3.** 48.345 (3) (a) of the statutes is amended to read:

48.345 (3) (a) The home of a parent ~~or~~, other relative, or guardian of the child, except that the judge may not designate the home of a parent ~~or~~, other relative, or guardian of the child as the child's placement if the parent ~~or~~, other relative, or guardian has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the judge

determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

**History:** 1971 c. 125; 1977 c. 354; 1979 c. 300; 1987 a. 285; 1989 a. 31, 107; 1993 a. 363, 377, 385, 491; 1995 a. 27; 1995 a. 77 ss. 235 to 237, 239, 241, 249, 250, 257 to 263; 1995 a. 225, 448; 1997 a. 27, 80, 164, 292; 1999 a. 9, 149; 2001 a. 59, 69; 2005 a. 25, 387; 2009 a. 28, 94.

(END OF INSERT)

(INSERT 13-11)

**SECTION 4.** 48.42 (1) (d) of the statutes, as affected by 2009 Wisconsin Act 94, is amended to read:

48.42 (1) (d) A statement of whether the child may be subject to s. 48.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to s. 48.028 or that act, the names of the child's Indian custodian, if any, and tribe, if known.

**History:** 1973 c. 263; 1977 c. 354; 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 391; 1983 a. 447; 1985 a. 94; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987 a. 383; 1989 a. 86; 1993 a. 395, 446; 1995 a. 108, 225, 275, 352; 1997 a. 35, 80, 191, 237; 1999 a. 9, 83; 2005 a. 277, 293; 2005 a. 443 s. 265; 2007 a. 96, 97; 2009 a. 28, 79, 94.

(END OF INSERT)

(INSERT 15-14)

3. Any person who has filed a declaration of paternal interest under s. 48.025, who is alleged to the court to be the father of the child, or who may, based on the statements of the mother or other information presented to the court, be the father of the child.

(END OF INSERT)

(INSERT 33-20)

**SECTION 5.** 48.977 (4) (b) 6. of the statutes, as affected by 2009 Wisconsin Act 94, is amended to read:

48.977 (4) (b) 6. A statement of whether the child may be subject to s. 48.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may

1 be subject to s. 48.028 or that act, the names and addresses of the child's Indian  
2 custodian, if any, and Indian tribe, if known.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25, 130, 387; 2007 a. 77; 2009 a. 94.

(END OF INSERT)

(INSERT 34-19)

3 **SECTION 6.** 48.978 (2) (b) 11. of the statutes, as affected by 2009 Wisconsin Act  
4 94, is amended to read:

5 48.978 (2) (b) 11. A statement of whether the child may be subject to s. 48.028  
6 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may  
7 be subject to s. 48.028 or that act, the names and addresses of the child's Indian  
8 custodian, if any, and Indian tribe, if known.

History: 1997 a. 334; 2005 a. 130, 387; 2007 a. 96; 2009 a. 94.

(END OF INSERT)

(INSERT 43-10)

9 **SECTION 7.** 938.255 (1) (cm) of the statutes, as affected by 2009 Wisconsin Act  
10 94, is amended to read:

11 938.255 (1) (cm) If the petition is initiating proceedings under s. 938.13 (4), (6),  
12 (6m), or (7), whether the juvenile may be subject to s. 938.028 or the federal Indian  
13 Child Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to s.  
14 938.028 or that act, the names and addresses of the juvenile's Indian custodian, if  
15 any, and Indian tribe, if known.

History: 1995 a. 77, 352; 2001 a. 109; 2003 a. 284; 2005 a. 344; 2009 a. 94.

16 **SECTION 8.** 938.34 (3) (a) of the statutes is amended to read:

17 938.34 (3) (a) The home of a parent ~~or~~, other relative, or guardian of the  
18 juvenile, except that the court may not designate the home of a parent ~~or~~, other  
19 relative, or guardian of the juvenile as the juvenile's placement if the parent ~~or~~, other

1 relative, or guardian has been convicted of the homicide of a parent of the juvenile  
2 under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or  
3 vacated, unless the court determines by clear and convincing evidence that the  
4 placement would be in the best interests of the juvenile. The court shall consider the  
5 wishes of the juvenile in making that determination.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253, 277, 344; 2007 a. 97, 116; 2009 a. 8, 28.

(END OF INSERT)

(INSERT 43-24)

6 **SECTION 9.** 938.355 (6) (an) 1. of the statutes, as affected by 2009 Wisconsin Act  
7 94, is amended to read:

8 938.355 (6) (an) 1. If a juvenile who has violated a municipal ordinance, other  
9 than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a  
10 dispositional order imposed by the municipal court, the municipal court may petition  
11 the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose  
12 on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with  
13 monitoring by an electronic monitoring system. A sanction may be imposed under  
14 this subdivision only if, at the time of the judgment, the municipal court explained  
15 the conditions to the juvenile and informed the juvenile of those possible sanctions  
16 for a violation or if before the violation the juvenile has acknowledged in writing that  
17 he or she has read, or has had read to him or her, those conditions and possible  
18 sanctions and that he or she understands those conditions and possible sanctions.  
19 The petition shall contain a statement of whether the juvenile may be subject to s.  
20 938.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the

juvenile may be subject to s. 938.028 or that act, the names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

History: 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50; 2005 a. 277, 344; 2007 a. 20, 97; 2009 a. 28, 79, 94; s. 13.92 (2) (i).

**SECTION 10.** 938.355 (6) (b) of the statutes, as affected by 2009 Wisconsin Act 94, is amended to read:

938.355 (6) (b) *Motion to impose sanction.* A motion for imposition of a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the district attorney or corporation counsel, or the court that entered the dispositional order. If the court initiates the motion, that court is disqualified from holding a hearing on the motion. Notice of the motion shall be given to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all parties present at the original dispositional hearing. The motion shall contain a statement of whether the juvenile may be subject to s. 938.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963 and, if the juvenile may be subject to s. 938.028 or that act, the names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

History: 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50; 2005 a. 277, 344; 2007 a. 20, 97; 2009 a. 28, 79, 94; s. 13.92 (2) (i).

**SECTION 11.** 938.355 (6m) (am) 1. of the statutes, as affected by 2009 Wisconsin Act 94, is amended to read:

938.355 (6m) (am) 1. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by the municipal court, the municipal court may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at the time of the judgment the municipal court explained the conditions to the juvenile

1 and informed the juvenile of that possible sanction or if before the violation the  
2 juvenile has acknowledged in writing that he or she has read, or has had read to him  
3 or her, those conditions and that possible sanction and that he or she understands  
4 those conditions and that possible sanction. The petition shall contain a statement  
5 of whether the juvenile may be subject to s. 938.028 or the federal Indian Child  
6 Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to s. 938.028  
7 or that act, the names and addresses of the juvenile's Indian custodian, if any, and  
8 tribe, if known.

**History:** 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50; 2005 a. 277, 344; 2007 a. 20, 97; 2009 a. 28, 79, 94; s. 13.92  
(2) (i).

(END OF INSERT)

1       **SECTION 48.** 808.075 (4) (f) 3. of the statutes is renumbered 808.075 (4) (a) 14.  
2       and amended to read:

3       808.075 (4) (a) 14. Order for visitation under s. ~~54.56~~ 48.976 (11).

4       **SECTION 49.** 814.66 (1) (m) of the statutes is amended to read:

5       814.66 (1) (m) For filing a petition under s. ~~54.56~~ 48.976 (11), whether in a  
6       guardianship or temporary guardianship proceeding or to commence an  
7       independent action, \$60.

8       **SECTION 50.** 938.02 (8) of the statutes is amended to read:

9       938.02 (8) "Guardian" means the person named by the court having the duty  
10      and authority of ~~guardianship~~ guardian of the person of a juvenile.  
11

12      **SECTION 51.** 938.34 (3) (c) of the statutes is amended to read:

13      938.34 (3) (c) A foster home or treatment foster home licensed under s. 48.62  
14      or, a group home licensed under s. 48.625, or the home of a guardian under s. 48.977  
15      (2).

16      **SECTION 52.** 938.34 (3) (c) of the statutes, as affected by 2009 Wisconsin Acts  
17      28 and .... (this act), is repealed and recreated to read:

18      938.34 (3) (c) A foster home licensed under s. 48.62, a group home licensed  
19      under s. 48.625, or the home of a guardian under s. 48.977 (2).

20      **SECTION 53.** 938.345 (1) (e) of the statutes is amended to read:

21      938.345 (1) (e) Place any juvenile not found under ch. 880, 2003 stats., or ch.  
22      46, 48, 49, 51, 54, or 115 to have a developmental disability or a mental illness or to  
23      be a child with a disability, as defined in s. 115.76 (5), in a facility that exclusively  
24      treats one or more of those categories of juveniles.

25      **SECTION 54.** 938.345 (4) of the statutes is repealed.

26      **SECTION 55. Nonstatutory provisions.**

Insert  
43-10

25  
Insert  
43-24

(1) TRANSITION. Notwithstanding the treatment of sections 54.01 (10) and 54.10 (1) of the statutes by this act, all guardianships of the person of a minor under section 54.10, 2007 stats., or chapter 880, 2003 stats., in effect immediately before the effective date of this subsection remain in effect and shall be considered guardianships under section 48.976 of the statutes, as created by this act, until terminated by court order under section 48.976 (10) of the statutes, as created by this act, all matters commenced under ch. 54, 2007 stats., with respect to a guardianship of the person of a minor that are pending on the effective date of this subsection shall be completed under ch. 54, 2007 stats., and all orders appointing a guardian of the person of a minor under ch. 54, 2007 stats., entered beginning on the effective date of this subsection shall be considered guardianships under section 48.976 of the statutes, as created by this act.

#### **SECTION 56. Initial applicability.**

(1) PETITIONS FOR GUARDIANSHIP. Except as provided in subsection (2), this act first applies to a petition for full, limited, temporary, emergency, standby, or successor guardianship filed on the effective date of this subsection.

(2) DUTIES AND AUTHORITY OF GUARDIAN OF THE PERSON. The treatment of sections 48.023 (intro.), (3), and (4) and 48.976 (2) (c) 5. of the statutes first applies to a guardianship of the person of a minor in effect on the effective date of this subsection.

**SECTION 57. Effective dates.** This act takes effect on the first day of the 6th month beginning after publication, except as follows:

(1) TREATMENT FOSTER HOMES. The repeal and recreation of sections 48.62 (2) and 938.34 (3) (c) of the statutes takes effect on the date stated in the notice provided

1 by the secretary of children and families and published in the Wisconsin  
2 Administrative Register under section 48.62 (9) of the statutes.

3 (END)